UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ORIGINAL

Cyril Walter Horsham

NAME OF PLAINTIFF(S)

COMPLAINT

CV 14 - 00651

v.

Fresh Direct

BRODIE, J.

RECEIVED
JAN 28 2014
PRO SE OFFICE

BLOOM, M.J.

NAME OF DEFENDANT(S)

This action is brought for discrimination in employment pursuant to (check only those that apply):

______ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub. L. No. 102-166) (race, color, gender, religion, national origin).
NOTE: *In order to bring a suit in federal district court under Title VII, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.*

______ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 - 634 (amended in 1984, 1990, and by the Age Discrimination in Employment Amendments of 1986, Pub. L. No. 92-592 , the Civil Rights Act of 1991, Pub. L. No. 102-166).
NOTE: *In order to bring a suit in federal district court under the Age Discrimination in Employment Act, you must first file charges with the Equal Employment Opportunity Commission.*

______ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 - 12117 (amended by the ADA Amendments Act of 2008, Pub. L. No. 110-325 and the Civil Rights Act of 1991, Pub. L. No. 102-166).
NOTE: *In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.*

Jurisdiction is specifically conferred upon this United States District Court by the aforementioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriate under 42 U.S.C. §§ 1981, 1983 and 1985(3), as amended by the Civil Rights Act of 1991, Pub. L. No. 102-166, and any related claims under New York law.

1. Plaintiff resides at:

330 LENOX RD. APT 4B
Street Address

BROOKLYN, NY, 11226, 347-792-8396
County, State, Zip Code, Telephone Number

2. Defendant(s) resides at, or its business is located at:

23-30 BORDEN AVE
Street Address

QUEENS, LIC, NY, 11101
County, City, State, Zip Code

3. The address at which I sought employment or was employed by the defendant(s) is:

23-30 BORDEN AVE
Street Address

QUEENS, LIC, NY, 11101
County, City, State, Zip Code

4. The discriminatory conduct of which I complain in this action includes *(check only those that apply)*.

_____ Failure to hire.

__✓__ Termination of my employment.

_____ Failure to promote.

__✓__ Failure to accommodate my disability.

_____ Unequal terms and conditions of my employment.

_____ Retaliation

_____ Other acts *(specify)*: ______________________.

NOTE: *Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.*

5. It is my best recollection that the alleged discriminatory acts occurred on: 10 / 9 / 2012.
Date(s)

6. I believe that the defendant(s) *(check one)*

__✓__ is still committing these acts against me.

_____ is not still committing these acts against me.

7. Defendant(s) discriminated against me based on my:
(check only those that apply and state the basis for discrimination, for example, what is your religion, if religious discrimination is alleged)

[ ] race __________ [ ] color __________

[ ] gender/sex __________ [ ] religion __________

[ ] national origin __________

[ ] disability ✓ __________

[✓] age. If age is checked, answer the following:

I was born in 1946 (Year). At the time(s) defendant(s) discriminated against me,

I was [X] more [ ] less than 40 years old. *(check one)*.

NOTE: *Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.*

8. The facts of my case are as follows:

THE FACTS OF MY CASE ARE ATTACHED TO THIS DOCUMENT.

(Attach additional sheets as necessary)

NOTE: *As additional support for your claim, you may attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights.*

9. It is my best recollection that I filed a charge with the New York State Division of Human Rights or the New York City Commission on Human Rights regarding defendant's alleged discriminatory conduct on: 5/13/13 (Date).

10. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct on: 1/15/2014 (Date)

Only litigants alleging age discrimination must answer Question #11.

11. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct *(check one)*:

✓ 60 days or more have elapsed.

___ less than 60 days have elapsed.

12. The Equal Employment Opportunity Commission *(check one)*:

___ has not issued a Right to Sue letter.

✓ has issued a Right to Sue letter, which I **received on** January 14th 2014
Date

NOTE: Attach a copy of the Right to Sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, pre-judgment interest, costs, and attorney's fees.

[signature]
PLAINTIFF'S SIGNATURE

Dated: January 28th 2014

330 Lenox Rd, Apt 4B
Address
Brooklyn 11226 NY
347-792-8396
Phone Number

rev. 3/14/13

To Whom It May Concern

I, Cyril Walter Horsham states...I have worked for Fresh Direct for Six Years and sometime before I started my Summer Leave in June 2012 I realized there was a swelling on the right side of my groin. It would come and go at different periods of time so I monitored it as time went along. It did not prevent me from performing my duties at FD so I continued to work as normal. When I started my Summer Leave on the 4th June 2012; I went to Kings Country Hospital in Brooklyn, NY on the 5th June 2012 to check my groin situation and I was told I had a Hernia and would have to have surgery. I told the Doctor I would have to seek a second opinion and she said I was free to do so.

The rest of my Summer Leave was used up trying to get my Hernia situation corrected. I came close to having it corrected in The Virginia Hospital Center in Washington DC, but had to cancel because the union would not cover the cost. I came off my Summer Leave in September 2012 and resumed my duties at Fresh Direct. I did not initially informed anyone at FD of my Hernia situation mainly because I realized the union was not going to pay for it and I had to look for other means of having it done. So I continued to work and deal with the discomfort of my hernia as time went on. Then one of my friends suggested my contacting the Veteran Association and I immediately responded to her idea. I contacted the VA and my Veteran Status was updated and I was assigned a primary doctor and in October 2012 I had Hernia Surgery at the Veteran Association on 23rd Street in NYC.

When I came out of surgery the doctor recommended 14 days rest at home; followed by 6 weeks of light duty at work. I contacted my dispatcher and told him I had the surgery and what the doctor had recommended. After 13 days at home I returned to FD and the dispatcher told me to take my medical info to Zoila in Human Resources; I did and she asked me if I was injured on the job and I told her I was. Then another young lady came and took me to another location which she said dealt with safety and I repeated the information to her. They both made copies of the information; then I returned to my dispatcher. I told him I would be returning to work in two days because my doctor recommended home time was up. He told me not to come in because I was sick and he could not use me. He said I should wait until HR called and told me what type of light duty I would be put on before I returned to work.

Human resources did not call me and I did not call them either because I knew I was not ready to return to work, and at the same time I thought they were giving me time to heal. When the six weeks were almost up I went to the VA to be check by the doctor to see whether I was cured enough to return to work. The doctor told me I was not entirely on schedule and sometimes these hernias situations take as much as a year to heal. I told her I was due to return to work and whether she could extend my light duty time; she declined and advised me to wear a belt to secure myself.

When I got home I texted my dispatcher to inform him of my situation and he did not respond. I went to FD the next day to see my dispatcher and to know what my status at FD was. My dispatched "Al"told me I could stay at home for 3 months and would still have my job when I returned. I told him I was injured on the job. He asked if there was an injury report. I told him I had symptoms for quite awhile but did not know what it was until I saw the doctor when I started my Summer Leave. He then called my manager "Madjie" and instructed him to make the injury report. When the report was completed I was told by Madjie that I would have to get a report from my doctor stating I was fit enough to resume my duties before I could return to work.

When I returned to the VA to get the report the 23 St. Hospital was closed because of Hurricane Sandy and I had to go to Fort Hamilton in Brooklyn were I saw Dr. Clarke Holder who was not satisfied with my situation and healing progress and she scheduled a Cat Scam for the 6th December 2012. I kept my dispatcher informed of my situation. After I got the Cat Scam I was then scheduled to see the Urologist and after having that appointment I was then rescheduled for an appointment with my Primary Doctor at the 23rd Street Veteran Hospital on the 24th April 2013. When I got there I was seen by Dr. Caprice Cadacio because my primary doctor was still not available. After examining me she asked whether I thought I was fit enough to return to my normal duties and I told her I thought working on the truck had contributed to my getting the hernia and I was a bit skeptical about returning to the truck; she asked if I would consider doing light duty and gradually going back to the truck and I said I would try. She gave me a report which I took to FD on the 26th April 2013. I knew the report was not exactly what FD had required but I was hoping they would consider it. They apparently did not!

Sometime around this time period I had to go to the Union Offices concerning filing papers for payments to the Veteran Association for the Hernia Surgery and someone inquired about my situation with FD;

I told them FD had stopped paying me when I came out of surgery. One of the union members called someone at FD and seemed to be having conversations with them about my status. Then he came to me and gave me a phone number to call saying I would get some help with my situation through calling this number. I did call the number but did not get anyone responding on the line. Then I got a call from the union a few days after saying FD had stated to them that I had walked away from my job. The caller said I should go to Human Resources at FD and ask to speak to Michael about the situation. When I got to FD I was told by the Security Personal that there was no one name Michael working in Human Resources at Fresh Direct. I realized something was wrong because I knew whenever I reported my situation to my dispatcher he would always say he would let Michael in HR know about my situation. It was at this time I decided to report the situation to the Labor Board. I felt I was being unfairly treated by FD and I made a report concerning this fact. I believe FD acted improperly by stopping paying me when I came out of surgery for an injury I had gotten while working for FD. I also felt it was not right for FD to put me on a leave of absence after I came out of surgery; without informing me of their doing so. In fact during all this time after coming out of surgery I did not realize I was put on Leave of Absence! I knew I was not being paid; but my focus was on my healing and getting better, so I was not too concerned about pay. When I look back at the situation I have to wonder why FD was saying they were trying to contact me and could not! If you have me on a Leave of Absence; why would you expect to see me at Fresh Direct! They also stated that they could not contact me by phone; I have always been able to contact and be contacted by my dispatcher at FD and can't see how they could have had problems contacting me.

There is a document by Ms Yearwood-Drury titled "Statement of Facts ". I would say that 80% of the statements from Ms. Yearwood-Drury, Director July 15, 2013; cannot be supported!

She stated that "On May 10th 2013, Fresh Direct sent Horsham a letter asking him to report to the Human Resources Department on May 20, 2013 to discuss his options for returning to work. See exhibit 2. Horsham, however, did not report as requested on May 20, 2013, nor did he contact the company to reschedule.

This statement by Joyce Yearwood-Drury, Director New York State Division of Human Rights is not a true statement and Ms. Yearwood-Drury knows this statement is untrue because I took the envelope from FD to her! The letter from the post office Certified Mail came dated on the outside as June 24th and June 25th and when you open the envelope the letter inside is dated May 10th 2013. I took this letter to Ms. Year-wood-Drury and she was allowed to photo copy it! So I have to say; knowing she had this letter; that her statements cannot be supported Period!

I have never used the word—discriminated against; as Ms. Yearwood-Drury states in II. Discussion I would say again that 80% of what Ms. Yearwood-Drury has stated; cannot be supported, and if this case was thrown out because of what she has stated; I can only say there has been a travesty of Justice.

Ms. Yearwood-Drury states again that Horsham began his leave of absence in October 2012; I did not know I was on leave of absence until I made the report to the Labor Board in May 2013, and had to rebut statements from Fresh Direct during the time reports were being made by both parties. If Ms. Yearwood-Drury knows about all of this information; I have to ask where she got it from! I have stated I believe if anyone is caught lying; especially where testimony is concerned...I strongly believe that any and everything stated by this individual should be discarded!

In my six years working for FD I have been given quite a few Awards! One of which is the Gold Star Outstanding Attendance Award; I was also given awards for 5 years of Dedicated Service and a Critical Role played in the Growth of Fresh Direct! Ms. Yearwood-Drury was given copies of these awards and I am shocked to see how she has tried to portray me as someone with Second Handed Integrity; when she had this information about my record at FD! I have to repeat the fact that the statements she has made is not based on truth and cannot be supported; especially in courts of law!

It is difficult for me to realize what has transpired to make me look like the victimizer by the people who are entrusted to see that we are protected from predators and dealt with fairly in the workplace!

As I read more about what have transpired in this situation which has been geared towards having this case thrown out; I am inclined to believe that this have been a one sided affair to this point. I have not seen any evidence of my explanations being displayed to show reasons for my actions for or against. I also realize that this situation have been made to look more than it is. This is a simple case of a worker getting injured on the job and the actions or inactions of the company in response to what had transpired. What I am seeing here is everything including the kitchen sink being thrown at the injured worker. In looking at the situation I realized more and more of the decisions which have been made in this case were made behind closed doors with only representation by individuals and parties for Fresh Direct and I am informed after these decisions have been made of what they are.

I have no lawyers representing me although when I first went to the Human Rights Department I was told there would be a lawyer assigned to me who would go through the evidence presented and decisions would be made based on this evidence on how we would proceed with this case! I was never assigned a lawyer and I believe the fact that these decisions; first by the Human Rights Department; then followed by the EEOC, to throw out the complains must have been done without any regard to the evidence which I had presented in my defense!

In the reports by Director Joyce Yearwood-Drury; I have clearly stated that 80% of the statements she made cannot be supported and should be challenged and thrown out! Once this happens this; there is nothing to support the direction which this case is being pointed towards!

Where the EEOC and its Representative Holly M. Woodyard " Investigator " is concerned I find it appalling that an Investigator representing an organization as prestigious as the EEOC which is supposed to be there to represent the rights of people who have been denied their rights of fair treated in the work place; would decide to adopt the findings of the organization; which in this case is The Division of Human Rights: without investigating the complain themselves! The focal point here is a complaint was sent to the EEOC because of dissatisfaction with the decision made by the Division of Human Rights! The EEOC Representative Holly M. Woodyard comes to New York and decides to adopt the report made by Director Joyce Yearwood-Drury without making a personal investigation of the situation by contacting the complainant in this case thus; being in position to make a fair decision based on the evidence of both sides involved in this situation! If the EEOC Representative trusted the finding of The Division of Human Rights without making their own investigation then I believe there must have been some degree of trust and familiarity! If the EEOC Representative made a decision to adapt the finding of the Division of Human Rights without having a thorough investigation of the overall complain the decision to dismiss the complain by the EEOC is biased!

I have stated that 80% of the reports made by Director Joyce Yearwood-Drury cannot be supported; I would add that most of her statements are incorrect and if the dismissal of this suit is based on what the EEOC investigator termed adopting the finding of the investigating and reporting of Director Joyce Yearwood-Drury I say it is wrong because her reports of what happened is not credible!

When I reported to the EEOC I believed I would have had an opportunity for fair and even judgment; I had hopes because I felt they would show some neutrality in the overall situation. The fact that the EEOC came in and adopted the finding of the people whom I made my complains against baffles me. The EEOC never interviewed me and I don't believe they read any of my statements given in response to my defense. I am almost positive they did not read my statements; because if they had there is no way they could have made decisions to dismiss with the evidence being as one sided as it was presented by Director Joyce Yearwood-Drury. My only hope is to get fairness so we can reach some avenue of justice and the truth of this whole situation be allowed to surface!

Respectfully,

CW Horsham...

Sworn to before me this

01/24/2014

LEON CESAR
Notary Public, State of New York
No. 01CE602`537
Qualified in Kings County
Commission Expires Mar 15, 2015

Only litigants alleging age discrimination must answer Question #11.

11. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct *(check one)*:

✓ 60 days or more have elapsed.

___ less than 60 days have elapsed.

12. The Equal Employment Opportunity Commission *(check one)*:

___ has not issued a Right to Sue letter.

✓ has issued a Right to Sue letter, which I **received on** January 14th 2014
Date

NOTE: Attach a copy of the Right to Sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, plaintiff prays that the Court grant such relief as may be appropriate, including injunctive orders, damages, pre-judgment interest, costs, and attorney's fees.

[signature]
PLAINTIFF'S SIGNATURE

Dated: January 26th 2014

330 Lenox Rd, Apt 4B
Address
Brooklyn 11226 NY

347-792-8396
Phone Number

rev. 3/14/13

To: Whom it may concern at the EEOC...

Fr: Cyril Walter Horsham...

Re: Review of Stated Evidence and Decision by NYC State Division of Human Rights.

Sir / Madam...

Due to the obvious contradictions in evidence for and against the involved parties I believe there is need for review by individuals who are less inclined to come to Hasty Decisions about who is right or wrong in this situation. There is dire need for neutrality by the reviewing personnel so we can have results based on the feasibility of the given evidence associated with the case and not based on opinions of the reviewing individuals which can be based on a variety of issues which have nothing in common relating to the evidence presented.

I am a soldier who has served in the American Army and also in The Trinidad & Tobago Regiment in the country of my birth. Coming from a military background I am always concerned with procedures in relationship to stated actions to follow in relation to situations which may or may not occur.

In any organization in this society there are rules and regulations regarding procedures to guide our actions in projected situations which may occur at different times. Thus we can stay on the side of civility where the behavioral actions of our society are concerned. It seems like when I was injured at Fresh Direct there were no particular procedures implemented to guide the actions of FD in their response and treatment towards me. So their response was to send me on a leave of absence!

This however was done without my knowledge!

When I decided to go to the NYC Division of Human Rights to pursue my quest for fairness which I felt I was not getting through FD; I was also told there were procedures in place to deal with what I was faced with at the time. They said a lawyer would be assigned to review the evidence associated with the case and she/he would decide whatever direction would be followed based on how the evidence is determined in regard to its effectiveness in relationship towards what is right or wrong in relation to the overall conclusion of the case at hand.

There were no lawyers involved and the case was supposedly thrown-out by Mrs. Brenda Johnson!

It is not my desire, at this time, to challenge what has been said by Ms. Johnson. I can only say it seems like she never read my version of what transpired. I would however wait until the review to what has been done is completed and decide where I would go from there.

Respectfully,

CW Horsham...

EEOC Form 161 (11/09)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Cyril W. Horsham
330 Lenox Road, Apt 4B
Brooklyn, NY 11226

From: New York District Office
33 Whitehall Street
5th Floor
New York, NY 10004

☐ On behalf of person(s) aggrieved whose identity is *CONFIDENTIAL (29 CFR §1601.7(a))*

EEOC Charge No.	EEOC Representative	Telephone No.
16G-2013-03248	Holly M. Woodyard, Investigator	(212) 336-3643

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

☐ The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.

☐ Your allegations did not involve a disability as defined by the Americans With Disabilities Act.

☐ The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.

☐ Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge

☐ The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.

[X] The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.

☐ Other *(briefly state)*

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Kevin J. Berry,
District Director

January 14, 2014
(Date Mailed)

Enclosures(s)

cc:

FRESH DIRECT, LLC
Attn: Director of Human Resources
23-30 Borden Ave.
Long Island City, NY 11101